

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Request for Waiver of the 95% Location-Capable	)	
Handset Penetration Requirement by Sagebrush	)	
Cellular, Inc. and Triangle Communication	)	
System, Inc.	)	
	)	
Request for Further Limited Waiver by Blanca	)	
Telephone Company	)	

**ORDER**

**Adopted: August 23, 2007**

**Released: August 23, 2007**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this Order, we address requests for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by three Tier III wireless service providers (collectively, Petitioners).<sup>1</sup> Petitioners seek extensions of time from their current deadlines to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration among their subscribers of location-capable handsets by December 31, 2005.<sup>2</sup>

2. Pursuant to the ENHANCE 911 Act,<sup>3</sup> and based on the record before us, we find that relief from the 95% penetration requirement is warranted, subject to certain reporting requirements described in this Order. We therefore grant each Petitioner the relief it has requested.

<sup>1</sup> Sagebrush Cellular, Inc. and Triangle Communication System, Inc. Status Report and Waiver Request: The 95% Location Capable Handset Penetration Requirement, CC Docket No. 94-102 (filed May 15, 2007) (Sagebrush/Triangle Request); Blanca Telephone Company Status Report and Request for Further Limited Waiver, CC Docket No. 94-102 (filed May 24, 2007) (Blanca Request). Tier III carriers are non-nationwide commercial mobile radio service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

<sup>2</sup> *See* 47 C.F.R. § 20.18(g)(1)(v).

<sup>3</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

## II. BACKGROUND

### A. Phase II Requirements

3. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>4</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>5</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>6</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>7</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>8</sup>

4. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.<sup>9</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.<sup>10</sup>

### B. Waiver Standards

5. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.<sup>11</sup> The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."<sup>12</sup> To the

<sup>4</sup> See 47 C.F.R. § 20.18(e).

<sup>5</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3.

<sup>6</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3.

<sup>7</sup> See 47 C.F.R. §§ 20.18(f), (g)(2).

<sup>8</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>9</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>10</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>11</sup> *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; see also *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that "wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that "under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted").

<sup>12</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.<sup>13</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>14</sup> A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.<sup>15</sup> The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>16</sup>

6. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>17</sup> In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

7. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>18</sup> The ENHANCE 911 Act, *inter alia*, directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>19</sup>

### C. Petitioners' Requests for Further Waiver

8. The Commission previously granted each Petitioner relief from the December 31, 2005 deadline for achieving a 95% location-capable handset penetration rate. Sagebrush and Triangle's revised

<sup>13</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

<sup>14</sup> See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>15</sup> See *id.*

<sup>16</sup> *Id.* at 20997 ¶ 28.

<sup>17</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

<sup>18</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>19</sup> *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* § 107(b), 118 Stat. 3986, 3991.

deadline was June 30, 2007.<sup>20</sup> In their request for waiver, Sagebrush and Triangle reported a handset penetration rate of 93%.<sup>21</sup> Sagebrush and Triangle requested a further extension of the handset penetration deadline until December 31, 2007.<sup>22</sup> On July 6, 2007, Sagebrush and Triangle filed a supplement to their request, in which they reported that each company was in compliance with the 95% location-capable handset penetration requirement.<sup>23</sup>

9. Blanca's revised deadline for compliance with the 95% location-capable handset penetration rate was March 15, 2007.<sup>24</sup> In its request for waiver, Blanca reported a handset penetration rate of 93%.<sup>25</sup> Blanca requested a further extension of the handset penetration deadline until December 31, 2007.<sup>26</sup> In its August 1, 2007 quarterly compliance report, Blanca reported that it had achieved a 95% location-capable handset penetration rate.<sup>27</sup>

10. In their requests, Petitioners describe various efforts toward achieving compliance with the handset penetration deadline, including repeated mailings and bill inserts alerting customers to the upcoming cessation of analog service,<sup>28</sup> and constructing new facilities in order to improve digital coverage.<sup>29</sup> In support of their requests, each Petitioner asserts that its request satisfies the standard of the ENHANCE 911 Act.<sup>30</sup>

### III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have ensured that Phase II would be fully implemented as quickly as possible.<sup>31</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent

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<sup>20</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 7780, 7787 ¶ 20 (2006) (granting Sagebrush and Triangle an extension until June 30, 2007).

<sup>21</sup> Sagebrush/Triangle Request at 6.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> Sagebrush Cellular, Inc. and Triangle Communication System, Inc. Supplement to May 15, 2007 Status Report and Waiver Request: The 95% Location Capable Handset Penetration Requirement, CC Docket No. 94-102, at 2 (filed July 6, 2007) (reporting a 97% penetration rate for Sagebrush and a 95% penetration rate for Triangle).

<sup>24</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 21 FCC Rcd 2833, 2890-91 ¶ 24 (2006) (granting Blanca an extension until March 15, 2007).

<sup>25</sup> Blanca Request at 2.

<sup>26</sup> *Id.* at 1.

<sup>27</sup> Blanca Telephone Company Status Report, CC Docket No. 94-102, at 2 (filed Aug. 1, 2007).

<sup>28</sup> Blanca Request at 2.

<sup>29</sup> Sagebrush/Triangle Request at 6.

<sup>30</sup> Sagebrush/Triangle Request at 7-8; Blanca Request at 3.

<sup>31</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

with established waiver standards.<sup>32</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress's directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.<sup>33</sup>

12. We are concerned that Petitioners were unable to achieve compliance by the deadlines the Commission previously established for them. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of Petitioners' customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of Petitioners' service areas if those customers were forced to convert to location-capable handsets. It thus appears likely that strict enforcement of Petitioners' compliance deadlines would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.<sup>34</sup> We therefore conclude that relief from the deadline is warranted pursuant to the ENHANCE 911 Act. Accordingly, we grant each Petitioner relief from the 95% deadline, subject to certain reporting requirements.<sup>35</sup> We grant Sagebrush and Triangle an extension, *nunc pro tunc*, through June 28, 2007. We grant Blanca an extension, *nunc pro tunc*, through August 1, 2007.

13. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require Petitioners to file status reports every February 1, May 1, August 1, and November 1, for one year after the compliance deadline established in this Order for each Petitioner.<sup>36</sup> These reports shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; and (5) the percentage of its customers with location-capable phones.

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Request for Waiver of the 95% Location Capable Handset Penetration Requirement filed by Sagebrush Cellular, Inc. and Triangle Communication System, Inc. IS GRANTED, *nunc pro tunc*, subject to the reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is June 28, 2007.

15. IT IS FURTHER ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Request for Further Limited Waiver filed by Blanca Telephone Company IS GRANTED, *nunc*

<sup>32</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

<sup>33</sup> See *supra* ¶ 7.

<sup>34</sup> Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

<sup>35</sup> We note that the Commission has not received any objections from the public safety community specific to the instant Requests.

<sup>36</sup> Sagebrush and Triangle must therefore file quarterly reports through June 28, 2008, and Blanca through August 1, 2008. We believe it is important to continue monitoring Petitioners' progress for an additional year following their revised deadlines.

*pro tunc*, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is August 1, 2007.

16. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch  
Chief  
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